Supreme Court, U.S.
FILED
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No. 93-580

In The

Supreme Court of the United States

October Term, 1993

GARY D. LEWIS,

Petitioner,

v.

STATE OF OHIO,

Respondent.

Petition For A Writ Of Certiorari To The Ohio Court Of Appeals For Allen County, Third Appellate District

BRIEF IN OPPOSITION

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Statement of the Case

Petitioner was charged in a three count indictment with various theft offenses. Respondent was granted directed verdicts on the second and third counts. T. at 1454-1459.[1] The first count alleged that petitioner

> from on or about the 11th day of January, 1982 to on or about the 5th day of December 1989 . . . with purpose to deprive the owner, to-wit: Frances M. Shepard of property, to-wit: money in that he did knowingly obtain or exert control over said property without the consent of Frances M. Shepard and/or beyond the scope of the express or implied consent of Frances M. Shepard and/or by deception. The said Gary D. Lewis having committed more than one theft offense during the given span of time in the same capacity or relationship . . . to-wit: employee and/or friend and/or lover. The aggregated value . . . being in excess of $100,000. . . .

Petitioner moved for a bill of particulars which was furnished. In the bill respondent referred to 87 exhibits, principally checks, furnished as part of discovery. Respondent alleged in the bill that petitioner alternatively "beyond the express or complied [sic] consent of Frances M. Shepard, or by deception" exerted control over her property. The charge included two subsections of the Ohio theft statute.

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[1] References to the trial transcript will be by "T. at ___." References to filings with the Clerk will by docket entry "T.d. at ___." References to the video transcript of Frances Shepard will be by "T.v. at ___."

Petitioner moved to dismiss alleging that Ohio's theft by deception statute only provided for alternative, not conjunctive liability, among its subsections and that the prosecution could only aggregate offenses in any one status, ie. friend, or lover, not friend and lover.

The trial court ruled on the motion to dismiss that the state could only aggregate crimes involving theft in the same relationship. The Court ordered respondent to amend the bill of particulars to aver the capacity of the petitioner for each occurrence. T.d. 0086.

Respondent furnished a second amended bill of particulars, abandoning allegations of theft by lack of consent, and enumerating 191 thefts by deception, mainly by check, in petitioner's relationship as "friend" to the victim. Petitioner renewed his motion to dismiss, which the trial court overruled, finding that the capacity was now singular, "friend," and that the prosecution had limited its case to one subsection of the theft statute, the subsection prohibiting theft by deception. T.d. 0116.

At trial the evidence indicated that petitioner was a police officer, married, with children in college. The victim, Frances Shepard, in 1990 was a 92-year-old recluse. T. at 951, 1277-1293.

On January 2, 1990, Frances Shepard was found at home, delirious and in pain with a broken hip, by her niece's husband. T. at 463. Although it was winter, flies were in the house, decaying food was in the sink, and dog feces was in the rooms. T. at 464-66. While in the house, her niece found checks written to petitioner and various love letters from petitioner. T. at 701, 707.

The next day petitioner had a power of attorney and will prepared, naming him as the attorney-in-fact and the sole testamentary beneficiary. T. at 745-754. These were executed at the hospital.

While in the hospital Frances Shepard was diagnosed by a psychologist and a psychiatrist as being in the middle stages of progressive dementia. T. at 951, 1277-1293.

When Frances Shepard was interviewed by police inspector, Leon Campbell, she told him the petitioner did security work at her house. He would go to a nearby city pump station and watch the house. T. at 952. The inspector went to the pump station and observed that it would have been next to impossible to view the house from that vantage point. She also told the inspector that petitioner had put a screen over her chimney to keep her niece and her husband from coming down the chimney and poisoning her. T. at 953. Petitioner had also "repeatedly" put roofs on her house because of people walking on her roof, for which she had repeatedly paid him. T. at 953. She also told the inspector that petitioner had asked to kiss her on three occasions, "but that they were never intimate." T. at 962.

Testifying by video tape, Frances Shepard indicated that she paid petitioner $8 per hour for work, and that she had given him a "couple extra hundred" for his children in college. T.v. at 14, 17. She was not aware how much money she had given him. T.v. at 57. Among his chores he had protected her from some people from New Jersey, who were getting into "her bathroom and making noises . . . " T.v. at 47. Petitioner had "talked to them and threatened them to go home to New Jersey." T.v. at 48.

Typical of the thefts were the incidents related by petitioner's twin brother. Petitioner had asked him to repair a brick wall for Frances Shepard. After, he did the work for $400, petitioner brought him a check for $1,060 from Frances Shepard. The brother cashed the check and gave petitioner the proceeds, keeping $400 for his work. T. at 803-804

On another occasion the petitioner brought his brother a check for $1,347 and asked him to endorse it, as petitioner said that Frances Shepard had mistakenly made it out to the brother, rather than petitioner. T. at 804-805.

Petitioner also used a fellow police officer, Timothy Brandehof and his wife, Diane. Diane Brandehof testified that her husband gave her checks from Frances Shepard for $462 and $2,970 and she cashed them. Petitioner then came by and collected the money from her and gave her $50, in his words, for "handling the money." T. at 831-35. After she met Frances Shepard she refused to accept any more money. T. at 843. When she visited, Frances Shepard's house was dirty and smelled "very strong of dog urine." T. at 845.

Timothy Brandehof, to whom most of the third party checks were written, testified that petitioner told him that petitioner told Frances Shepard that Brandehof was doing work when he was not. She would make a check out to Brandehof, who would cash it, keep $50 and give the balance to petitioner. T. at 881, 900.

During the period, petitioner wrote Frances Shepard letters, many expressing his love for her. An example is a letter from the Coco Palms Resort in Kauai, Hawaii.

> I want you to know that *I miss you* very much and I'll be glad to be back home so I can see and hold you. I hope you have missed me as much as I do you. It wont [sic] be long and I'll be there with you. Just *don't forget me. I think of you all the time* even in my sleep . . . I love you and I know you love me. . . .
>
> *love* Gary x x x
>
> GL-8

An emergency guardian had been appointed for Frances Shepard. When the guardian did an initial inventory of Frances Shepard's household, she found numerous love letters from the defendant to Frances Shepard. T. at 1151-1158. When the guardian asked Mrs. Shepard why petitioner had received the money, "she had indicated to me that Mr. Lewis was suffering from AIDS and she had given it to him to help with his AIDS medicine." T. at 1165-66.

The evidence indicated that petitioner had received $81,802 in checks to him, $57,909 in checks to third parties, and $71,254 in checks payable to Frances Shepard and endorsed to petitioner.

At the conclusion of the evidence the Court instructed the jury that

> [t]he State has alleged that Gary Lewis obtained money by deception from Frances Shepard in the relationship as a friend. Before the defendant can be found guilty the state must prove, by proof beyond a reasonable doubt, that the defendant deceived Mrs. Shepard as a friend. T. at 1770-71.

The jury found petitioner guilty of theft by deception in an amount exceeding $100,000.

Summary of the Argument

Petitioner, a police officer, stole in excess of $200,000 from a 90 year old woman by various schemes including claims of love, claims that he was protecting her from drug dealers, and claims that he was providing maintenance services for rental properties owned by her.

Petitioner was charged under three subsections of theft in the first count of his indictment. Pursuant to elections by the prosecution and by orders of the trial court, the charge was narrowed to one subsection.

Satisfying due process, the charge was specific, giving in addition to the statutory language, relevant dates, the property stolen, and the name of the victim. The jury found him guilty. A charge or indictment can repeat statutory language if the statute specifies a complete offense and contains sufficient factual detail to avoid double jeopardy

Petitioner's claim that the Ohio court of appeals applied the incorrect standard of review should not be considered as petitioner has never advocated any other specific standard.

Argument

An indictment in the words of the statute enumerating specific facts satisfies a criminal defendant's Sixth Amendment right to trial by jury and indictment by a grand jury.

The indictment was not constitutionally defective. An indictment can be in the words of the statute if the statute and the facts alleged give the defendant sufficient notice to be able to fairly defend.

Contrary to the argument of petitioner, an indictment can be in the words of the statute if the statute and the facts alleged, give the defendant sufficient notice to be able to fairly defend. An indictment must

> contain . . . the elements of the offense charged and fairly inform . . . a defendant of the charge against which he must defend, and second, enable . . . him to plead an acquittal or conviction in bar of future prosecutions for the same offense. *Hamling v. United States*, 418 U.S. 87 at 117 (1974).

The words of the statute can be used if " 'the words themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished.' " *Id.* See also *Evans v. United States*, 153 U.S. 584 at 587 (1893): "an indictment for statutory misdemeanor is sufficient . . . where the words of the statute themselves . . . 'fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary. . . . ' "

In this case statutory language was used, enumerating each element of the offense, then additional facts were alleged. When edited as narrowed by the trial court and by respondent's response to the bill of particulars, the count alleged that

> from on or about January 11, 1982 to on or about December 5, 1989 . . . Gary D. Lewis . . . did with purpose to deprive the owner, to wit: Frances Shepard of property, to-wit: money in that he did knowingly obtain or exert control over said property without the consent of Frances M. Shepard . . . by deception . . . in the same capacity . . . to wit: friend . . . in violation of R.C. §2913.02 . . .

The count then alleged that the amount exceeded $100,000.

While the trial court required the prosecution to narrow the charge, such an election was not constitutionally mandated. The evidence indicated that petitioner used various schemes, singularly and in concert, to get money. He used his protestations of love, he falsely claimed to have done work, he used his position as a police officer to create fear, and he schemed with another police officer to extract money from Frances Shepard. Petitioner would want to require the state to prove each theft in some discrete and defined relationship, so he could then argue that the evidence indicated some other relationship and the charge was, therefore, not proven.

> When a woman's charred body has been found in a burned house, and there is ample evidence that the defendant set out to kill her, it would be absurd to set him free because six jurors believe he strangled her to death (and caused the fire

> accidentally in his hasty escape), while six others believe he left her unconscious and set the fire to kill her. *Schad v. Arizona*, 501 U.S. ___, 115 L.Ed.2d 555 at 577 (1991), Scalia concurring.

Constitutionally the state only needed to prove that each theft was done by some material deception.

Petitioner seems to be angling towards an argument such as found in *Schad v. Arizona*. There defendant argued he should not be convicted when the jury was instructed that he could be found guilty of capital murder on either premeditated or felony murder grounds, and the jury need not agree on which theory. A defendant could theoretically be convicted by a less than a unanimous verdict as to any one theory. Here, however, the alternative theories were ordered abandoned by the trial judge.

Petitioner's reliance on *Russell v. United States*, 369 U.S. 749 (1962) is misplaced. In *Russell* defendants were indicted for a non-common law crime of failing to answer a question before a congressional committee. The indictment failed to specify the subject of the congressional investigation. The defendants could not determine if they were required to answer questions, unless they knew the subject of the inquiry. They could have no criminal culpability unless they knew what questions they had or could rightfully refuse to answer. Therefore when an indictment refers to other statutes or extraneous facts, the crime must be pled so as to give notice of how those statutes were violated. This is no more than fair. As this court noted in burden-shifting cases

> [w]here a State's particular way of defining a crime has a long history, or is in widespread use, it is unlikely that a defendant will be able to

> demonstrate that the State has shifted the burden of proof as to what is an inherent element of the offense, or has defined as a single crime multiple offenses that are inherently separate. *Schad v. Arizona*, 501 U.S. ___, 115 L.Ed.2d 555 at 570-71.

While this is not a burden-shifting case, this case involves a crime descended from the common law. While Ohio theft by deception statute will be discussed more, *infra*, this statute is far different than the statute involved in *Russell*.

One must also note that petitioner was given liberal discovery and presented a vigorous defense. Copies of all checks and other exhibits used against him at trial were furnished to him before trial. He was given a list of witnesses. The defendant called ten witnesses on his behalf. The claims therefore that the indictment was so vague as to deprive him of his Sixth Amendment right to trial by jury and Fourteenth Amendment right to due process are without merit.

Ohio's theft by deception statute, being neither novel nor unique, is more specific than similar statutes in other states.

The Ohio statute is similar to the Model Penal Code. Respondent particularly complains about Ohio's definition of deception. A side-by-side comparison between the Model Penal Code's definition of "deceive" and Ohio's definition of "deception" reveals striking similarities.

Ohio Statute	Model Penal Code
R.C. §2913.01(A). "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation,	§223.3. A person deceives if he purposely: (1) creates or reinforces a false impression, *including false impressions as to law, value, intention or other state of mind* . . . [the italicized portion is found in the third part of the Ohio statute, also italicized, *supra*]
by withholding information, by preventing another from acquiring information,	(2) prevents another from acquiring information which would affect his judgment of a transaction; or
or by any other conduct, act, or omission that creates, confirms, or perpetuates *a false impression in another, including a false impression as to law, value, state of mind,* or other objective or subjective fact.	(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship . . . Model Penal Code (1962)

Ohio's definition of deception, therefore is not unusual, nor vague, and is nearly the same as the Model Penal Code definition.

Compared to other states the Ohio statute is a model of specificity. In Florida, for example, larceny is defined in part as occurring when "[a] person who with intent unlawfully to deprive . . . the true owner . . . (a) obtains from such person by color or aid of fraudulent or false

representation or pretense . . . " Florida Statutes Annotated §812.021. In New York the same conduct is enumerated as "[l]arceny includes a wrongful taking . . . (a) By conduct heretofore defined or known as . . . common law larceny by trick, embezzlement, or obtaining property by false pretenses." New York Penal Law §155.05. Petitioner's argument that theft by deception in Ohio is vague is without merit.

In attacking the standard of review below, petitioner never proposes an applicable standard, nor establishes that any appropriate standard was breached.

The *sine qua non* of this argument is that constitutional error took place below. Not having demonstrated any error, one does not get to this issue. While defendant argues that the Ohio court of appeals used the incorrect standard, petitioner has never set out below or before this court the standard which he proposes.

Defendant did not assert below, nor has he argued in this Court, that any other specific standard should be used albeit *de novo*, abuse of discretion, or harmless error beyond a reasonable doubt. e.g. *Chapman v. California*, 386 U.S. 18 (1967); *Sullivan v. Louisiana*, 508 U.S. ___, 124 L.Ed.2d 182 (1993). Not having argued for any standard, neither respondent nor this Court should guess or try to craft a standard which petitioner deems appropriate.

The court of appeals below in treating petitioner's assignment of error as to whether or not the trial judge should have sustained the objection to the second amended bill of particulars, used an abuse of discretion

standard. When petitioner appealed to the Ohio Supreme Court he was required to set forth the propositions of law, which he wished the Ohio Supreme Court to adopt.[2] He assigned no proposition of law pertaining to the standard of review. Respondent is therefore unable to respond other than to quote this Court that "the Constitution entitles a criminal defendant to a fair trial, not a perfect one." *Delaware v. Van Arsdall*, 475 U.S. 673 at 681 (1986). Absent constitutional error, and petitioner's failure to preserve this issue below and in this Court, this issue is not presented for review.

Conclusion

The petition for certiorari should therefore be denied. No constitutional error is demonstrated. Appellant was well represented and was convicted fairly with all of the safeguards of our system of jurisprudence.

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Dated: December 1, 1993

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[2] Rule V. Section 1.(D) of the Ohio Supreme Court Rules of Practice provides that the brief must contain an argument "headed by the proposition of law, which the appellant contends is applicable to the facts in the case and which, if he prevails, could serve as a syllabus."

APPENDIX

Model Penal Code 223.3 Theft by Deception.

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) prevents another from acquiring information which would affect his judgment of a transaction; or

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

New York Penal Law § 155.05 Larceny; defined

1. A person steals property and commits larceny when, with intent to deprive another of property or to

appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

2. Larceny includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subdivision one of this section, committed in any of the following ways:

(a) By conduct heretofore defined or known as common law larceny by tespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretenses;

(b) By acquiring lost property.

A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner;

(c) By committing the crime of issuing a bad check, as defined in section 190.05;

(d) By false promise.

A person obtains property by false promise when, pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as to the case may be, does not believe that the third person intends to engage in such conduct.

(e) By extortion.

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered the actor or another will:

(i) Cause physical injury to some person in the future; or

(ii) Cause damage to property; or

(iii) Engage in other conduct constituting a crime; or

(iv) Accuse some person of a crime or cause criminal charges to be instituted against him; or

(v) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(vi) Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

(vii) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(viii) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationship.

Florida Statutes Annotated §812.021 "Larceny" defined; penalties; sufficiency of indictment, information or warrant

(1) A person who with intent unlawfully to deprive or defraud the true owner of his property or of the use and benefit thereof, or to appropriate the same to the use of the taker or of any other person;

(a) Takes from the possession of the true owner, or of any other person; or obtains from such person possession by color or aid of fraudulent or false representations or pretense, or of any false token or writing; or obtains the signature of any person to a written instrument, the false making whereof would be punishable as forgery; or secretes; withholds, or appropriates to his own use, or that of any other than the true owner, any property;

(b) Having in his possession, custody or control, as a broker, bailee, public servant, attorney, agent, employee, clerk, trustee, or officer of any person, association, or corporation, member of copartnership, pool or joint venture, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any property, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof;

(c) While acting as executor, administrator, committee, guardian, receiver, collector, or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, secretes, withholds or otherwise appropriates to his own use, or that of any person other than the true owner or person entitled thereto any property in his possession or custody by virtue of his office, employment, or appointment;

(d) Takes unpurchased merchandise of any mercantile establishment on the premises of such establishment with the intent to convert the same to personal use without paying the purchase price therefor;

(e) Obtains property of another by threatening to:

1. Accuse anyone of a criminal offense.

2. Expose any secret tending to subject any person to hatred, contempt, or ridicule or to impair his credit or business repute.

3. Take or withhold action as a public servant.

4. Bring about or continue a strike, boycott, or other collective unofficial action if the property is not demanded or received for the benefit of the group in whose interest the defendant purports to act.

5. Testify or provide information, or withhold testimony or information, with respect to another's legal claim or defense.

(f) Fails to take reasonable measures to restore property which he knows to have been

lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient after he comes into control of such property; shall, upon conviction, be guilty of larceny.

(2) [Omitted. Deals with penalties]

(3) [Omitted. Deals with penalties]

(4) Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt, solicitation, or conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color or aid of fraudulent or false representation or pretense, or of any false token or writing, to part with his property or the possession thereof, was illegal, immoral, or unworthy.

(5) It shall be sufficient for any indictment, information, or warrant returned, filed, or issued under this section to charge generally that the defendant, at the time and in the county specified, did steal the personal or real property, thing in action, evidence of debt or contract, or article of value out of which the prosecution arose, describing the same in general terms and alleging generally the ownership and value thereof. It shall not be necessary when alleging the larceny of property over a period of time that the exact date or dates the property was taken be alleged, but instead the total period of time may be alleged generally. This section shall not be construed as intending to interfere with the power of the court to require the state to furnish the defendant with a bill of particulars in proper cases and on sufficient showing that cause exists for the same.

(6) [Omitted. Deals with evidentiary matter].

Ohio Supreme Court Rules of Practice, Rule V. Briefs on Merits in Appeal Cases

Section 1. Appellant's Brief. The appellant in all civil cases must file eighteen copies of a brief within ten days of the date the copies of the record are filed with the Court. The appellant in all criminal cases must file eighteen copies of a brief within forty days of the date of the allowance of the appeal. The body of the brief shall not exceed fifty pages. The page limitation shall not apply in cases involving the death penalty.

The appellant's brief must comply with Rule VI and contain:

(A) A Table of contents listing the table of authorities, statement of facts, argument (with the proposition or propositions of law and authorities relied upon to support the same) and appendix, all as required by the following subparagraphs of this rule, with references to the pages of the brief where each appears, and arranged as shown by the following sample:

[SAMPLE]

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TABLE OF AUTHORITIES [if required, see Section 1(b) of this rule.] 1

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[May be divided between statement of the case and statement of facts. Appellee should confine

his statement to differences between the parties or to additional material.]

ARGUMENT 3

[Sample proposition of law taken from first paragraph of syllabus of Bureau of Support v. Kreitzer (1968), 16 Ohio St.2d 147, 243 N.E.2d 83.]

Proposition of Law No. 1:

The duty of the state of Ohio to support inmates (or patients) of benevolent institutions under the jurisdiction of the Department of Mental Hygiene and Correction, as set forth in R.C. 5121,01, is qualified by R.C. 5121.03, et seq., so that the nature of its liability for support is secondary. Primary liability for such support, at least in the case of a patient without dependents, rests absolutely upon the patient himself, by virtue of R.C. 5121,04(B)(1), or upon his estate 3

Authorities cited in support of Proposition of Law No. 1: [in the order in which they appear in the brief] State, ex rel. Price v. Huwe (1922), 105 Ohio St. 304, 137 N.E. 167 3

State v. Kiesewetter (1892), 37 Ohio St. 546 3

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R.C. 5121.03 5

Lackmann v. Dept. of Mental Hygiene, 156 Cal. App. 2d 674, 320 P.2d 186 5

[If desired, the argument under each Proposition of Law may be subdivided. Appellee shall

state the proposition in the form which would, if adopted, support judgment in his favor.]

Proposition of Law No. 2: 7

[State with successive numbers, each, if any, additional propositions relied upon.]

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[Note: All of the above mentioned documents must be included in the appellant's brief. They shall not be repeated in the printed record or appellee's brief.]

(B) If the total number of separate citations exceeds twelve (12), a table of authorities listing all cases or other authorities, arranged alphabetically, and all states, constitutional provisions, and departmental, board or commission regulations relied upon, with references to the pages of the brief where each citation appears.

(C) A statement of the facts with page references, in parentheses, to supporting portions of the printed or

nonprinted record and of the original transcript of testimony. (Obviously, in a memorandum under Rule II, Section 4, references to a printed or nonprinted record cannot be made.)

(D) An argument, which shall be headed by the proposition of law which the appellant contends is applicable to the facts in the case and which, if he prevails, could serve as a syllabus. See paragraph three of the syllabus of Drake v. Bucher, Supt. (1966), 5 Ohio St.2d 37, 213 N.E.2d 182. If several propositions of law are contended for, the argument shall be divided by utilizing each proposition as a subheading.

(E) An appendix containing (a) a copy of the notice of appeal to the Supreme Court, (b) a copy of the assignments of error filed in the Court of Appeals, (c) a copy of the judgment or order appealed from, (d) copies of all judgments, orders, and opinions rendered by any court or board in the case, (e) complete copies of any unreported case cited, (f) the rules or regulations of any department, board, commission or any other agency relied upon (such rules shall be set forth in full, or if too voluminous, a copy thereof shall be furnished with each copy of the brief), and (g) a copy of any statute or constitutional provision relied upon, to be construed or otherwise involved in the case. The pages of the appendix shall be numbered.

(F) If it is necessary to file multiple appeals from a single decision of a Court of Appeals or an administrative agency and such appears are docketed under separate case numbers, counsel for the appellants should, whenever, possible, file a single brief or memorandum for all

such appeals. The cover page of such brief or memorandum should contain the names and numbers of each case.

Section 2. Brief Opposing Appeal. Within thirty days of the filing of appellant's brief, the party opposing the appeal shall file a brief in form complying with the provisions of this rule and Rule VI and answering the appellant's contentions and making any other contentions deemed appropriate as reasons for affirmance of the order or judgment appealed from. The body of the brief shall not exceed fifty pages. The page limitation shall not apply in cases involving the death penalty.

Section 3. Reply Briefs. Any reply brief must be filed within twenty days after the filing of appellee's brief and must comply with Rule VI as to form. The body of the brief shall not exceed twenty pages. The page limitation shall not apply in cases involving the death penalty.

Section 4. Additional Authorities. In all cases where the brief filed in compliance with these rules do not contain all the authorities on which counsel intends to rely, there must be filed a brief statement of additional authorities. This statement should be filed at least five days before oral argument.

Section 5. Briefs Amicus Curiae. Briefs amicus curiae conforming to the requirements of this section may be filed with leave of Court. Any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support.

Section 6. Proof of Service. Service of a copy of each brief or statement of additional authorities shall be made

upon opposing counsel forthwith, and proof of service shall be filed with the Clerk.